

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on January 30, 2003 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Jim Keane, Vice Chairman (D)  
Rep. Donald Steinbeisser, Vice Chairman (R)  
Rep. Bob Bergren (D)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Ray Hawk (R)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Gary Matthews (D)  
Rep. Scott Mendenhall (R)  
Rep. Penny Morgan (R)  
Rep. Allen Rome (R)  
Rep. Sandy Weiss (D)  
Rep. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Alberta Strachan, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 410; HB 359 (1/23/03)  
Executive Action: HB 440 Tabled; HJR 14 Do Pass As Amended; HB 410 Do Pass As Amended

**Shirley K. Brown, Administrator, Child & Family Services, Department of Health & Human Services,** provided written testimony on a performance audit in regard to a bill which was heard on January 29, 2003.

**EXHIBIT (buh20a01)**

**HEARING ON HB 410**

**Sponsor:** REP. CINDY YOUNKIN, HD 28, Bozeman

**Opening Statement by Sponsor:**

**REP. YOUNKIN,** said this bill was an act providing that an employee who is injured or dies while traveling in the course of employment is entitled to compensation if the employer furnishes all of the employee's transportation or if the employer full reimburses the employee for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement. She also provided some proposed amendments.

**EXHIBIT (buh20a02)**

**{Tape: 1; Side: A; Approx. Time Counter: 30 - 83}**

**Proponents' Testimony:**

**Jerry Driscoll, Montana State AFL-CIO,** said he supported the bill as amended. There was a court case in which Colstrip won over what construction workers refer to as "travel pay." This is a daily payment but is also incentive pay. The intent of this bill is, when an employee leaves a job site, even though travel pay is given, the employee is not in the course of employment.

**{Tape: 1; Side: A; Approx. Time Counter: 84 - 111}**

**Jacqueline Lenmark, American Insurance Association,** said they support this bill with the amendments.

**{Tape: 1; Side: A; Approx. Time Counter: 111 - 120}**

**Opponents' Testimony:**

**Travis Ahner, Montana Trial Lawyers Association,** said they opposed this bill because of the language in the actual reimbursement.

**{Tape: 1; Side: A; Approx. Time Counter: 120 - 141}**

**Gene Fenderson, Montana Progressive Labor Caucus,** said they stand in opposition to this bill without the amendments. There are still some problems with the amendment.

**{Tape: 1; Side: A; Approx. Time Counter: 141 - 158}**

**Informational Testimony:**

**Kevin Braun, Department of Labor & Industry**, said he was there to answer questions.

**Questions from Committee Members and Responses:**

**REP. GALLIK** asked **REP. YOUNKIN** if the change with the amendments would have some effect on state employees. He then asked about the per diem. **REP. YOUNKIN** said her intent was not to affect state employees receiving the per diem.

**{Tape: 1; Side: A; Approx. Time Counter: 166 - 178}**

**Closing by Sponsor:**

The sponsor closed.

**{Tape: 1; Side: A; Approx. Time Counter: 182 - 195}**

**HEARING ON HB 359**

**Sponsor:** **REP. KATHLEEN GALVIN-HALCRO, HD 48, Great Falls**

**Opening Statement by Sponsor:**

**REP. GALVIN-HALCRO** said this bill was an act requiring an employer with 15 or more employees, including management, to adopt a policy generally providing for rest periods of not less than 10 minutes every 4 hours; providing exceptions; and providing an immediate effective date. She also provided a copy of her testimony.

**EXHIBIT (buh20a03)**

**{Tape: 1; Side: A; Approx. Time Counter: 207 - 290}**

**Proponents' Testimony:**

**Don Judge, Teamsters Local 190**, said they support this bill. He mentioned he had received telephone calls from employees questioning the statute number for this legislation. Most employees believe this already exists. Most employees do receive breaks by employers who recognize that in addition to mental, personal and physical health of those workers, it is also good for safety.

**{Tape: 1; Side: A; Approx. Time Counter: 290 - 330}**

**Richard Sargent, M.D.**, said he came before the committee to speak of his professional experience in dealing with the employees of a call center in Helena which opened about three years ago. He

said they were inundated with employees coming to his office to talk about the stresses of their work. It got to the point where the doctors could chart those patients with a stamp. The doctors knew exactly what the complaints were and knew exactly what they could do about it. The patients did not get breaks, they were expected to take a telephone call every two minutes, their computers were monitored and if they didn't take a phone call every two minutes, someone came to check on them. This is a law that we need to have because there are a group of employers who don't have the manners to take care of their employees in a proper fashion.

**{Tape: 1; Side: A; Approx. Time Counter: 330 - 366}**

**Darrell Holzer, AFL-CIO**, said he was offering their strong support for this bill. The opposition to this bill is going to be the same as was heard every time this issue was addressed. This is the right thing to do. Even some of the big corporations and their top executives are adopting the power nap philosophy. It improves productivity, reduces safety problems and the list goes on. It is sad that in 2003 a law needs to be adopted to make employers do the right thing.

**{Tape: 1; Side: A; Approx. Time Counter: 366 - 401}**

**Gene Fenderson**, said he supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 401 - 451}**

**REP. SYLVIA BOOKOUT-REINICKE**, said she was appalled that employers did not allow breaks to use the restroom.

**{Tape: 1; Side: A; Approx. Time Counter: 451 - 497}**

**Opponents' Testimony:**

**Brad Griffin, Montana Retail Association** and the **Montana Restaurant Association**, said a ten minute break is still required every four hours. It is unworkable and impractical for a restaurant or retail business to take a quick bathroom break. This is accepted and commonplace. To take a break in the busiest time of a shift is simply not workable. A good food server would not think of taking a 10 minute break in the middle of a rush. By the same token, he cannot imagine an employer who refuses to allow their employees to take a break. This bill is not about what reasonable employees would or wouldn't do. It is about what a couple of unreasonable employers would do. This bill could become a real problem for a reasonable employer with an unreasonable employee. He urged the committee not to impose a one-size-fits-all solution that will have unintended consequences.

**{Tape: 1; Side: A; Approx. Time Counter: 497 - Tape: 1, Side: B; Approx. Time Counter: 17}**

**Tom England, representing himself,** said he had 41 employees. Even though he sees the benefits of providing breaks, he goes to great lengths to see that people have the opportunity to take their 15 minute breaks twice a day and a one-hour lunch.

**{Tape: 1; Side: B; Approx. Time Counter: 19 - 48}**

**Webb Brown, Montana Chamber of Commerce, Bozeman Chamber of Commerce, Kalispell Chamber of Commerce,** said he was concerned if this bill had a statutory defense for an employee not accomplishing work.

**{Tape: 1; Side: B; Approx. Time Counter: 48 - 67}**

**Riley Johnson, National Federation of Independent Businessmen,** said there were too many "holes" in this legislation. Something should be done with the bill to offer protection in the areas discussed by the opposition.

**{Tape: 1; Side: B; Approx. Time Counter: 67 - 92}**

**Informational Testimony:**

**John Andrew, Department of Labor & Industry,** said he was there to answer questions.

**Questions from Committee Members and Responses:**

**REP. BOOKOUT-REINICKE** questioned Mr. Andrew about the rule-making authority. **Mr. Andrew** said the Department of Labor does have rule-making authority.

**{Tape: 1; Side: B; Approx. Time Counter: 100 - 111}**

**REP. KEANE** asked **REP. GALVIN-HALCRO** regarding the difference of this bill and the bill proposed during the last session. **REP. GALVIN-HALCRO** said this bill is no different than the bill ended up coming out of the committee.

**{Tape: 1; Side: B; Approx. Time Counter: 111 - 123}**

**REP. MORGAN** asked Mr. Andrew about phone calls regarding release from employment. **Mr. Andrew** said he does receive these calls and

the caller most often requests the rules or procedures for this release from employment.

**{Tape: 1; Side: B; Approx. Time Counter: 123 - 162}**

**REP. BITNEY** asked Mr. Andrew and Mr. Judge about the number of inquiries and number of complaints from the work force during break times. **Mr. Andrew** said there is no requirement that breaks be provided. The employee is paid for that time.

**{Tape: 1; Side: B; Approx. Time Counter: 163 - 220}**

**REP. GALLIK** asked Mr. Johnson if there were potentials about court incidents if this bill were passed. **Mr. Johnson** said he would be required to go to some type of accounting of those hours and times of the employees.

**{Tape: 1; Side: B; Approx. Time Counter: 220 - 271}**

**REP. MENDENHALL** asked Mr. Andrew about the consequences involved if an employee didn't take the mandatory breaks during the day - what were the consequences. **Mr. Andrew** said the time was already considered as compensable time. The employee is already paid the that time.

**{Tape: 1; Side: B; Approx. Time Counter: 271 - 300}**

**CHAIRMAN MCKENNEY** asked **REP. GALVIN-HALCRO** about the protection of the employer and the policies which will be put into place.

**REP. GALVIN-HALCRO** said once a policy is put into place and the Department of Labor derive their rule-making authority, they could address the concern.

**{Tape: 1; Side: B; Approx. Time Counter: 300 - 413}**

**Closing by Sponsor:**

The sponsor closed.

**{Tape: 1; Side: B; Approx. Time Counter: 413 - 464}**

**EXECUTIVE ACTION ON HB 440**

**{Tape: 2; Side: A; Approx. Time Counter: 30 - 69}**

**Motion:** **REP. BOOKOUT-REINICKE** moved **HB 440 DO PASS.**

**Motion/Vote:** **REP. KEANE** made a **SUBSTITUTE MOTION HB 440 BE TABLED.** Motion carried 18-0.

**EXECUTIVE ACTION ON HJR 14**

**{Tape: 2; Side: A; Approx. Time Counter: 69 - 280}**

**Motion:** **REP. BOOKOUT-REINICKE** moved **HJR 14 DO PASS.**

**Discussion:**

**REP. GALVIN-HALCRO** said the study was completed over the interim on this resolution from last session. It was suggested that **REP. BIXBY** contact the department to see exactly what needs to be done to avoid writing another resolution studying the issue further.

The facts are all there and the department could proceed with the new information.

**REP. LAWSON** said the issues are so great in this area and so important that another study is not needed. The focus of this bill was more on the Native American population. This bill is just another step in the positive direction to get a handle on the problems the citizens in Montana are faced with trying to work with state government. He then said he would offer an amendment.

**Motion/Vote:** **REP. LAWSON** moved **HJR 14 AMENDMENTS.** **Motion carried 18-0.**

**Discussion:**

**REP. BOOKOUT-REINICKE** said the department used their powers too heavy handedly in many instances.

**REP. ROME** said the study had been completed and local control was taken away. He questioned if this study should be redone or if it is money wasted. **REP. BOOKOUT-REINICKE** said there would not be money wasted.

**REP. MORGAN** said that it was her understanding an interim study was needed on the qualifications of social workers. Social workers have an incredible amount of power. Perhaps this study would derive a higher class of social worker that would not be so apt to make a decision before all of the information was accumulated. She then indicated she would vote for this bill.

**Motion/Vote:** **REP. LAWSON** moved **HJR 14 DO PASS AS AMENDED.** **A roll call vote was taken. Motion carried 14-4 with REPS. McKENNEY, STEINBEISSER, BITNEY, and ROME voting no.**

**EXECUTIVE ACTION ON HB 410**

*{Tape: 2; Side: A; Approx. Time Counter: 280 - 370}*

**Motion:** **REP. MENDENHALL** moved **HB 410 DO PASS.**

**Motion:** **REP. KEANE** moved **HB 410 AMENDMENTS.**

**Discussion:**

**REP. GALLIK** said he opposed the amendments.

Vote: Motion carried 17-1 on HB 410 AMENDMENTS with REP. GALLIK voting no.

Motion/Vote: REP. KEANE moved HB 410 DO PASS AS AMENDED. Motion carried 17-1 with REP. GALLIK voting no.



**ADJOURNMENT**

Adjournment: 9:45 A.M.

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REP. JOE MCKENNEY, Chairman

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ALBERTA STRACHAN, Secretary

JM/AS

**EXHIBIT** (buh20aad)